

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

DANIEL MARTE-BEROA,

Defendant

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U.S. DISTRICT COURT
SAN JUAN, P.R.
(5)
CRIMINAL 09-0005 (ADC)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY) AND
WAIVER OF INDICTMENT AND AGREEMENT TO PROCEED BY
INFORMATION AND FAST TRACK PROGRAM

I. Personal Background

Daniel Marte-Beroa, the defendant herein, accepted to participate in the Fast-Track Program and agreed to waive his right to a preliminary hearing and his right to indictment by grand jury. The defendant agreed to plea guilty to an information filed today, which only count charges that defendant, knowingly and unlawfully uttered, possessed, and used documents prescribed by statute or regulations as evidence of authorized stay in the United States, to wit: a Puerto Rico driver's license number 4730978, and a social security card number XXX-XX-4118, issued under the name of "Luis A. González-Figueroa," which the defendant knew to be forged or unlawfully obtained, in violations of 18 U.S.C. § 1546(a).

II. Consent to Proceed Before a Magistrate Judge

Today, while assisted by Osvaldo Sandoval, Esq., the defendant, by consent, appeared before me in order to waive his right to prosecution by indictment and to plead guilty to a one-count information. The defendant agreed to proceed by way of information and waived his right to be charged with an indictment. The defendant

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informed that he understood the charges which he faced and was informed of his constitutional right to be charged in an indictment, a right which he could waive if he consents to being charged by information of the United States Attorney. He noted that he had discussed this with his attorney and acknowledged that no threats or promises had been made to him to waive indictment and proceed by way of information.

In open court the defendant was questioned as to the purpose of the hearing being held. The defendant responded that the purpose of the hearing was to plead guilty. The defendant was advised of his right to have all proceedings, including the change of plea hearing, before a United States district judge. Defendant was given notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under oath and that it was expected that his answers would be truthful (he was also explained that the consequences of lying under oath could lead to a perjury charge); and (c) his right to have the change of plea proceedings presided over by a district judge instead of a magistrate judge. The defendant was also explained the differences between the appointment and functions of the two. The defendant consent to proceed before this magistrate judge.

III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

A. Compliance With Requirements Rule 11(c)(1)

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47

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3 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st
4 Cir. 1991)).

5 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

6 In response to further questioning, defendant was explained and he
7 understood that if convicted on count one, he may be sentenced to a term of
8 imprisonment of not more than 10 years, a fine not to exceed \$250,000, and a term
9 of supervised release of not more than three years.

10 The defendant shall pay a special assessment of \$100, as required by 18 U.S.C.
11 § 3013(a).

12 Defendant was advised that the ultimate sentence was a matter solely for the
13 court to decide in its discretion and that, even if the maximum imprisonment term
14 were to be imposed upon him, he later could not withdraw his guilty plea if he was
15 unhappy with the sentence of the court. The defendant understood this.

16 Defendant was explained what the supervised release term means. It was
17 emphasized that cooperation with the United States Probation officer would assist
18 the court in reaching a fair sentence.

19 Emphasis was made on the fact that at this stage, no prediction or promises
20 as to the sentence to be imposed could be made by anyone. Defendant responded to
21 questions in that no promises, threats, inducements or predictions as to what
22 sentence will be imposed have been made to him.

23 The parties agree that defendant qualifies for participation in the District of
24 Puerto Rico's Fast-Track Program.

25 Defendant is an alien to the United States. Defendant acknowledges that
26 pleading guilty and entering into this plea may have a negative effect upon
27 defendant's immigration status with the United States.
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3 **B. Admonishment of Constitutional Rights**

4 To assure defendant's understanding and awareness of his rights, defendant
5 was advised of his right:

6 1. To remain silent at trial and be presumed innocent, since it is the
7 government who has the burden of proving his guilt beyond a reasonable doubt.

8 2. To testify or not to testify at trial, and that no comment could be made by
9 the prosecution in relation to his decision not to testify.

10 3. To a speedy trial before a district judge and a jury, at which he would be
11 entitled to see and cross examine the government witnesses, present evidence on his
12 behalf, and challenge the government's evidence.

13 4. To have a unanimous verdict rendered by a jury of twelve persons which
14 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
15 of competent evidence.

16 5. To use the subpoena power of the court to compel the attendance of
17 witnesses.

18 Upon listening to the defendant's responses, observing his demeanor and his
19 speaking with his attorney, that to the best of counsel's belief defendant had fully
20 understood his rights, it is determined that defendant is aware of his constitutional
21 rights.

22 **C. Consequences of Pleading Guilty**

23 Upon advising defendant of his constitutional rights, he was further advised
24 of the consequences of pleading guilty. Specifically, defendant was advised that by
25 pleading guilty and upon having his guilty plea accepted by the court, he will be
26 giving up the above rights and would be convicted solely on his statement that he is
27 guilty.
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Furthermore, the defendant was admonished of the fact that by pleading guilty he would not be allowed later on to withdraw his plea because he eventually might disagree with the sentence imposed, and that when he were under supervised release, and upon violating the conditions of such release, that privilege could be revoked and he could be required to serve an additional term of imprisonment. He was also explained that parole has been abolished.

D. Plea Agreement

The parties have entered into a plea agreement that, for exchange of his plea, the government agrees to recommend that defendant be sentenced to time served or the lower end of the applicable guideline, whichever is greater. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.
2. The plea agreement is an "agreement" between the defendant, defense attorney and the attorney for the government which is presented as a recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.
3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.
4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

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3 5. The defendant understands that if the court accepts this agreement and
4 sentences defendant according to its terms and conditions, defendant waives and
5 surrenders his right to appeal the conviction and sentence in this case.

6 Defendant acknowledged having understood this explanation.

7 **E. Government's Evidence (Basis in Fact)**

8 The government presented a proffer of its evidence with which the defendant
9 basically concurred.

10 Accordingly, it is determined that there is a basis in fact and evidence to
11 establish all elements of the offense charged.

12 **F. Voluntariness**

13 The defendant accepted that no leniency had been promised, no threats had
14 been made to induce him to plead guilty and that he did not feel pressured to plead
15 guilty. He came to the hearing for the purpose of pleading guilty and listened
16 attentively as the prosecutor outlined the facts which it would prove if the case had
17 proceeded to trial.

18 **IV. Conclusion**

19 The defendant, by consent, has appeared before me pursuant to Rule 11,
20 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
21 of the information.

22 After cautioning and examining the defendant under oath and in open court,
23 concerning each of the subject matters mentioned in Rule 11, as described in the
24 preceding sections, I find that the defendant Daniel Marte-Beroa is competent to
25 enter this guilty plea, is aware of the nature of the offense charged and the
26 maximum statutory penalties that the same carries, understands that the charge is
27 supported by the government's evidence, has admitted to every element of the
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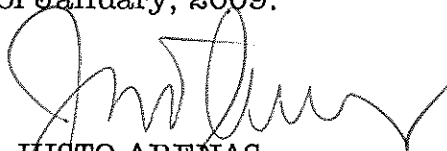
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3 offense charged, and has done so in an intelligent and voluntary manner with full
4 knowledge of the consequences of his guilty plea.

5 Therefore, I recommend that the court accept the guilty plea of the defendant
6 and that the defendant be adjudged guilty as to count one of the information.

7 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
8 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
9 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
10 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
11 objections to the report and recommendation is a waiver of the right to review by the
12 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

13 At San Juan, Puerto Rico, this 7th day of January, 2009.

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16 JUSTO ARENAS
17 Chief United States Magistrate Judge
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